

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C' NEW DELHI**

**BEFORE SHRI C.M. GARG, JUDICIAL MEMBER
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA No. 902/Del/2019
Assessment Year: 2014-15**

ACIT, Circle 30(1),
New Delhi.

vs. Indian Farm Forestry Development
Cooperative Ltd., Iffco House, 34,
Nehru Place, New Delhi.

PAN : AAAAI0323F

(Appellant)

(Respondent)

Appellant by : Sh. Yogers Nayyar, Sr. DR
Respondent by: None

Date of hearing: 20.04.2022

Date of order : 22.04.2022

ORDER

PER C.M. GARG, J.M.

When the case was called for hearing, neither the assessee nor his Representative or counsel appeared nor any adjournment application has been filed on behalf of the assessee. From perusal of the appeal record, we note that the notice has been issued to the assessee on 04.03.2022 for 20.04.2022. Despite service of notice, there is no representation on behalf of the assessee. This appeal is pending since 2019. Thus, it is an old appeal. On perusal of the appeal record, we find that the Revenue's appeal can be decided on

the basis of material available on record and after hearing the arguments of the Id. DR appearing for the appellant/department. Therefore, we proceed to hearing and adjudicate the appeal.

2. Learned Senior Departmental Representative (DR) drawing our attention towards relevant part of the assessment order para-3, submitted that there was no business expediency towards which the assessee has incurred project expenses in implementing various schemes of the Government for the benefits of weaker sections of the society. He further pointed out that the impugned expenditure is in fact in the nature of donation but not covered u/s. 80G of the Income-tax Act, 1961 ("the Act" for short). Therefore, the Assessing Officer rightly held that it is not an admissible deduction as it has not been incurred wholly and exclusively for the purpose of business of the assessee. Ld. DR also submitted that the first appellate authority has deleted the addition by treating project expense as capital expenses from A.Y. 2008-09 to 2012-13, but in fact, the department has filed appeal before the Hon'ble Tribunal on this issue against the order of CIT(A). Ld. Sr. DR vehemently pointed out that the impugned expenditure do not fulfil the conditions of section 37(1) of the Act and cannot be treated as revenue expenditure and hence, the expenditure should not be claimed by the assessee below the line and should not be charged to profit & loss account as expenditure for the purpose of business. Ld. DR submitted that the Id. CIT(A) granted relief to the assessee without any cogent and plausible reasons only on the basis that the assessee has been granted relief

by the Id. CIT(A) on this issue, but the appeal was pending before the Tribunal for adjudication. Therefore, Id. CIT(A) was not correct in granting relief to the assessee.

3. From the relevant operative part of the first appellate order, we observe that the Id. CIT(A) has granted relief to the assessee with the following observations and conclusions :

“6.1.1 Ground NO.3

As regards to impugned addition of Rs.5,31,86,985/- in respect of project expenses, it is noticed from the assessment order passed by the Assessing Officer that the disallowance was made by the Assessing Officer inter alia holding that there is no business expediency in the expenditure. The assessee has incurred the project expenses in implementing various schemes for social uplifting of farmers and weaker section of society, hence the expenditure is in the nature of donation but not covered u/s 80G of the Act. With these findings, Assessing Officer held that the expenditure is of capital in nature and the addition has been made accordingly.

6.1.2 On the basis of observation of the Assessing Officer and the submissions made by Ld. AR, it is inferred that the moot question involved in the matter is the nature of activities and the incurrence of expenses. The Assessing Officer is of the view that expenditure incurred is not in connection with the business activities being carried on whereas as per appellant's submissions, summarized supra, it is gathered that its main object is to carry out the business of social development activities for the benefit of the rural poor by various schemes such as Forestry Development, Water Harvesting, Creation of Job opportunities etc etc. Further from the submissions made it is evident that the appellant has debited the expenses after netting of the grants/reimbursements received by it from various Govt, and non Govt, and International social development organizations. And as per the audit report - annexure-iv appended to it, it has categorically been certified by the auditor that, “no capital expenditure/receipt has been debited / credited to the P & L Account”. Further, it is pertinent to mention here that the issue under consideration is covered one as the same issue was involved in the earlier assessment years, which was the subject matter of appeal and my Ld. Predecessors have decided the issue in favour of the appellant deleting the addition made by the Assessing Officer. For reference, the

observation of my Ld. Predecessor while adjudication the appeal for the AY 2013-14 in appeal no. 369/16-17 dated 12/12/2017 has observed as under:

"5.2b It is also observed from the copies of the appellate orders in its own case by the first and second appellate authority, relied upon by the appellant, that the nature of the activities as well as their foci is similar - all aimed at rural development. Yet, it is observed from the impugned order that confusion has continued over the years as regards the nature of the appellant's activities viv-a-vis business per se. The difference between the project expenses undertaken by a project implementer and that undertaken by an agency separate therefrom, appears to have become blurred. It is necessary to discern between the two. Further, it is not the end result in such circumstances that will determine the nature of activity but the activity itself. Also, it is gathered from the appellant's submissions that capital expenses have been reimbursed - the appellant has not incurred such expenditure but has incurred only revenue expenses - it has been clarified in the Annexure -4 to Form 3CD that "No capital expenditure / receipts has been debited / credited to the Profit & Loss Account". Again, the appellant's contention that "Expenses reimbursed have been deducted from project expenditure to the extent the same have been actually reimbursed by the sponsors of the projects," is borne out from available records.

5.2c From the copies of the following orders relied upon by the appellant -

ITAT Delhi's order in AY 2008-09 (ITA No. 1700/Del/2012) and in AY 2009- 10 (ITA No. 4796/Del/2012) dated 26/07/2016

CIT (A)'s order for the AY 2008-09 (Appeal No. 152/10-11) dated 22/12/2011

CIT (A)'s order for AY 2012-13 (Appeal No. 67/15-16) dated 28/10/2016

It is observed that the disallowance made on this issue in the relevant AYs has been deleted. Further, it is observed that the facts of the case thereon are similar to those of the present case In fact, the IT AT has upheld the order of the CIT(A) for AY 2008-09 on two grounds - no capital expenses were claimed as deduction by the appellant and such expenditures were accepted in earlier years. It is mentioned, inter alia, "...On above consideration, we find that the Assessing Officer has treated the claimed expenditure as capital in nature keeping in mind that the purpose

of business of the assessee society is trading of fertilizers, which is not correct rather the assets created namely forest on waste land, check dams, ponds etc became the property of the villages managed through village community and the assessee society only provided expertise and funding to them. Considering material aspects of the case, we are of the view that the Ld. CIT(A) has rightly hold that the Assessing Officer was not correct in holding that expenditure were not incurred wholly and exclusively for the purpose of the business and the alternatively it was capital in nature. We thus do not find infirmity in the first appellate order on the issue also because in earlier assessment year 2004-05 to 2007-08 when assessment were framed u/s 143(3) of the Act similar expenditure have been accepted. Similar are the facts of the case in the assessment year 2009-10. The finding of the Ld. CIT(Appeals) is thus upheld. The ground No. 1 of the appeal is accordingly rejected..."

5.2d. Thus, in view of the contents of the preceding sub-paras as well as the fact that the activities undertaken by the appellant were accepted in earlier years, albeit there being no res judicata on assessments, I am in agreement with the appellant's contention regarding its business. Accordingly, in due deference to the above mentioned order of the ITAT Delhi as well as my predecessors, the disallowance made in the impugned order on this issue (Rs. 6.28,66,118/-) is deleted. The ground at (c) above is allowed."

Similarly, while adjudication the appeal for AY 2011-12, the Ld CIT(A) has deleted the addition in appeal no. 32/14-15 dated 30/11/2015 considering the submissions of the appellant and the appellate orders passed by Ld. CIT (A) for AY 2008-09 to 2010-11 observing as under:

"4.3.2 Therefore, considering the entirety of the facts that similar issue is involved in the assessment year under consideration and the fact that detailed and reasoned orders have been passed by my Ld. Predecessor in the appellant's case for the AYs 2008-09 to 2010-11, I am of the considered view that the net project expenses debited to P&L account by the appellant society are allowable as legitimate business expenses, therefore the addition of Rs. 6,66,30,684/- is hereby deleted "

Similarly, the Hon'ble ITAT while adjudicating the issue for the AY 2010-11 in ITA No. 6831/Del/2014 dated 05/09/2017 has decided the matter in favor of the appellant following the outcome of the appeal filed by revenue for the AYs 2008-09 and 2009-10. Accordingly, no merit was

found in the appeals filed by the revenue by the Hon'ble Income Tax Appellate Tribunal and appeals of the revenue were dismissed.

6.1.4 Considering the factual matrix of the instant case which are found to be identical to the facts of earlier assessment years, mentioned supra, submissions of Ld. AR, judicial precedence available on record, I am of the considered of the view that net project expenses debited by the appellant are allowable as per the provisions of section 37(1) of the Act as the same are found to be incurred for the business purpose of the appellant society. Accordingly, Assessing Officer is directed to delete the addition of Rs.5,31,86,985/-. Thus the above ground of appeal is allowed."

4. From the above, it is clearly discernible that the similar issue was adjudicated in favour of the assessee for A.Y. 2008-09 to 2010-11 and this order was again considered by the Id. CIT(A) in assessee's appeal No. 32/14-15 pertaining to A.Y. 2011-12 order dated 30.11.2015. We further note that the order of the Id. CIT(A) for A.Y. 2008-09, 2009-10 and 2010-11 was also decided in favour of the assessee by the ITAT. Ld. CIT(A) has referred the order of ITAT dated 05.09.2017 for A.Y. 2010-11 in ITA No. 6831/Del/2014 (supra) who dismissed the ground, upholding the first appellate order which granted relief to the assessee on this issue. Learned CIT(A) also took cognizance of order of his predecessor for A.Y. 2013-14 in appeal No. 369/16-17 dated 12.12.2017 which clearly reveals that the Id. CIT(A) granted relief by following the first appellate orders and orders of the Tribunal in the similar facts and circumstances on the similar issue.

5. After taking into consideration above factual position of the first appellate orders and the Tribunal orders for preceding assessment years, we have no hesitation to hold that the project

expenses debited by the assessee are allowable u/s. 37(1) of the Act and the same are found to be incurred for the purpose of assessee's society, which also inextricably linked with the business purpose and objects of the assessee. Therefore, we are unable to see any ambiguity, perversity or any reason to interfere with the first appellate order of Id. CIT(A) granting relief to the assessee and thus, we uphold the same. Accordingly, both the grounds of Revenue are dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 22/04/2022.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 22/04/2022

'aks'

Sd/-

(C.M. GARG)
JUDICIAL MEMBER